
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Mercury Broadcasting Company, Inc.)	File No. EB-02-CG-522
Radio Station WKBF)	NAL/Acct. No. 200332320004
Moline, Illinois)	
)	FRN: 0001 6778 06

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 24, 2003

By the District Director, Chicago Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Mercury Broadcasting Company, Inc., (“Mercury”), has apparently violated Sections 17.50 and 17.57 of the Commission’s Rules (the “Rules”).¹ These violations occurred as a result of Mercury failing to repaint their antenna structures as often as necessary to maintain good visibility, and failing to notify the Commission of tower ownership change. We conclude that Mercury is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. On July 3, 2002, an agent from the Commission’s Chicago Office inspected the antenna structures of Radio Station WKBF. At the time of the inspection, the paint on the antenna structures was badly faded and sections of the towers had paint missing, exposing the bare metal.

3. On August 7, 2002, the Chicago Office issued a Notice of Violation (“NOV”) to Mercury for violation of FCC Rule Sections 17.50 and 17.57, tower cleaning and repainting, and ownership notification respectively.

4. On August 19, 2002, the Chicago Office received a response to the NOV from Mercury’s counsel. In their reply, Mercury did not dispute the violations. Mercury provided evidence that on August 14, 2002, they hired a contractor to paint the WKBF towers, and had corrected the tower registration.

¹ 47 C.F.R. §§ 17.50 and 17.57.

III. DISCUSSION

5. Section 17.50 requires antenna structures painting to be cleaned or repainted as often as necessary to maintain good visibility. At the time of the inspection, the paint on the antenna structure was severely faded with paint missing and bare metal exposed.

6. Section 17.57 requires the owner of a Registered Antenna Structure to immediately notify the Commission of any change in ownership information. At the time of inspection, the tower was registered to a previous owner.

7. The Commission assesses monetary forfeitures pursuant to Section 503(b) of the Communications Act of 1934, *as amended*, (the “Act”)² as implemented in Section 1.80 of the Rules.³ A forfeiture may be assessed against a person who the Commission finds to have willfully⁴ and repeatedly⁵ failed to comply with the provisions of the Act or the Rules. Forfeiture amounts are decided in accordance with Section 503(b)(2) of the Act and the Commission’s forfeiture guidelines in Section 1.80(b)(4) of the Rules.

8. Based on the evidence before us, we find that Mercury willfully and repeatedly violated Sections 17.50 and 17.57 of the Rules by failing to repaint the antenna structures as needed and failing to notify the Commission upon change in ownership information. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”), the base forfeiture amount for failing to comply with prescribed marking is \$10,000, and for failure to file required forms or information, \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 (“ACT”), as amended, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ After applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, we believe a thirteen thousand dollar (\$13,000) forfeiture is warranted.

² 47 U.S.C. § 503(b).

³ 47 C.F.R. § 1.80.

⁴ Section 312(f)(1), which also applies to Section 503(b), provides: [t]he term “willful”, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provisions of the Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁶ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Mercury Broadcasting Company, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for failing to repaint the antenna structure as needed and failure to notify the Commission of change in ownership information, in violation of Sections 17.50 and 17.57.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Mercury Broadcasting Company, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332320004 and FRN 4995882.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20402 and MUST INCLUDE THE NAL/Acct. No. 200332320004 and FRN 4995882.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response

⁷ 47 C.F.R. §§ 0.111, and 0.311.

⁸ See 47 C.F.R. § 1.1914.

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or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Mercury Broadcasting Company, Inc., 115 East Travis, San Antonio, TX 78205.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
District Director
Chicago Office

Attachment A: Condensed List of Small Entities